

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.2 OF 2020
IN
ARBITRATION PETITION NO.1474 OF 2019**

Chembur Shivsmruti Co-op. Housing Society Applicant/Petitioner
V/s.

M/s. G.A. Builders Private Limited Respondent

Dr. Uday Warunjikar a/w. Mr. Siddhesh Pilankar and Mr. Sumit Kate for applicant/petitioner.

Mr. Chirag Kamdar i/b. Ms. Dipashri Raorane for respondent.

**CORAM : K.R.SHRIRAM, J.
DATED : 16th JULY 2020**

P.C. :

1 Heard the counsel. The application of original petitioner is to direct respondent to remove its representatives cum employees from the site in question in view of earlier order dated 20th February 2020 within such period as this Hon'ble Court may deem fit and proper.

2 Mr. Kamdar appearing for respondent states that after the 20th February 2020 order was passed, respondent had taken out an Interim Application on 12th March 2020 to recall, though incorrectly mentioned as set aside, the order dated 20th February 2020. That application is still pending.

3 At the same time, Mr. Kamdar in fairness and on instructions from his clients stated that since 18 months or so the alternative accommodation compensation has not been paid to members of petitioner.

Mr. Warunjikar stated that it is for 22 months. Mr. Kamdar stated that the amount payable is about Rs.1.40 Crores. Mr. Warunjikar, however, is not sure about the exact figure but states that if respondent pays the entire amount forthwith with interest to be determined by the Court, he can try to persuade his clients to work out the matter.

4 In my view, a person who has not honoured his commitment as per the development agreement with petitioner deserves no sympathy. At the same time, subject to respondent complying with the following conditions, petitioner will not act on the termination notice. At the same time, the prayer as prayed for in this Interim Application has to be granted and is hereby granted and if respondent complies with the conditions laid below and succeeds in its Interim Application for recall of the order dated 20th February 2020, respondent is certainly at liberty to apply to the Court for appropriate reliefs to place their employees at the site. The conditions are the entire principal amount together with interest at 18% p.a. payable from the date of the each default upto and including 15th July 2020 shall be paid as under :

- (i) 25% on or before 23rd July 2020;
- (ii) 50% on or before 6th August 2020;
- (iii) the balance 25% shall be paid on or before 13th August 2020;
- (iv) the compensation payable for August 2020 shall also be paid on the date it falls due.

5 If these installments are meticulously paid (with no chance of granting any extension), petitioner will hold in abeyance acting on the termination notice. It is clarified that if the installment of 23rd July 2020 is not paid, petitioner is at liberty to act on the termination notice. If the first installment is paid but second installment of 6th August 2020 is not paid, petitioner is at liberty after 6th August 2020 to act on the termination notice. If the first and second installments are paid but the third installment is not paid, which is due on 13th August 2020, petitioner may still go ahead and act on the termination notice and if the installment for August 2020 upto the grant of OC and handing over physical possession is not meticulously paid on the due dates, petitioner may go ahead and act on the termination notice. Petitioner may only hold in abeyance acting on the termination notice as stated earlier.

6 Respondent shall remove its personnel/representative/employees etc. from the site on or before 22nd July 2020.

7 After this order was dictated, Mr. Kamdar stated that he has instructions to consent for the above order being passed.

8 Interim application accordingly stands disposed.

Gauri A.
Gaekwad

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(K.R. SHRIRAM, J.)